Serial No. 09/690,872
Art Unit No. 2127

REMARKS

Claims 1-15 were currently pending in the patent application. By this amendment, Applicants add claims 16-20. No additional filing fee is required for the addition of 5 new dependent claims wherein the total number of claims does not exceed twenty total claims.

The Examiner has rejected Claims 1-15 under 35 USC 112; has rejected Claims 1-15 under 35 USC 102(a) as anticipated by the CMG article; has rejected Claims 1-5 and 11-15 under 35 UCS 103 as unpatentable over Hartsell in view of Chafe; and, has rejected Claims 6-10 under 35 UCS 103 as unpatentable over Hartsell in view of Chafe and further in view of MacFarlane.

With regard to the rejections of Claims 1-15 as indefinite, Applicants have amended the language of the independent claims to provide antecedent basis where required. No new matter in introduced by these amendments. Applicants believe that the amendments fully address the Examiner's concerns.

With regard to the rejections of Claims 1-15 as anticipated by the CMG article, Applicants point out that they are the authors of the CMG article, as clearly

YOR920000462 -9-

Serial No. 09/690,872
Art Unit No. 2127

identified on page 3 of the Specification. Accordingly, the
article is not a 102(a) reference against the application,
since the article does not show invention by another.
Moreover, Applicants note that the article was published in
December of 1999, not more than one year prior to the filing
of the present application. Accordingly, the article is not
a 102(b) reference against the application, since the
article does not show publication of the invention more than
one year prior to the filing date of the present
application.   Furthermore, Applicants respectfully assert
that the cited article, while laying a foundation for the
present invention, does not teach each and every claim
feature, since the article does not expressly teach
representing capacities of processing systems in units of
time and sorting the capacities of a plurality of processing
systems from shortest to longest time (Claims 1, 11, and 15,
and all of the remaining claims which depend therefrom). As
noted in the present Specification, the CMG article shows a
method for projecting device capacity by past history of
access to and usage of the relevant information for a single
computer system.   The article does not, however, teach
representing a plurality of capacities, one capacity for
each system of said plurality of processing systems in units

YOR920000462   -10-

Serial No. 09/690,872
Art Unit No. 2127

of time and sorting the capacities of said plurality of processing systems from shortest to longest time (Claims 1, 6-7, 11, 13, 15, and 17-20), let alone the further details of calculating the life expectancy of each resource, identifying at least one critical resource with the shortest life expectancy (Claims 2, 12, and 16), and acting on the capacity/life expectancy determinations across a plurality of processing systems (Claims 3-5, 8-10, 14, 18, and 20). In light of the foregoing, Applicants respectfully request withdrawal of the 102(a) rejections.

With regard to the obviousness rejections under 35 USC 103, Applicants note that, if the CMG article by Applicants was a 102 reference, it would stand as evidence that the invention was completed in this country prior to the effective date of two of the additionally cited references (the 12/20/99 date is prior to the effective dates of 3/3/00 for Hartsell and 12/21/99 for Chafe). A Declaration of Prior Invention is not being submitted at this time, since Applicants believe that the invention is patentably distinct from the cited references.

The Hartsell patent publication is directed to a differentiated service and billing system. The Examiner has concluded that Hartsell teaches representing the capacity of

YOR920000462   -11-

Serial No. 09/690,872
Art Unit No. 2127

each of a plurality of processing systems in units of time. However, the cited paragraphs describe characterizing capacity based on the number of cached files, the number of TCP/IP connections per second, and the number of streams (paragraph 0104). Applicants respectfully assert that none of the Hartsell teachings are applied to representing the capacity of more than one processing system and that none of the Hartsell capacity passages teach capacity in units of time. The cited paragraph 0166 does not detail any units and does not refer to more than one system. The cited passage from paragraph 0288 detail service monitoring (i.e., available services), but not capacity. Applicants conclude, therefore, that Hartsell does not obviate the claimed feature of a step or means for representing capacity of each of a plurality of processing systems in units of time.

With regard to the claim feature of sorting the capacities of a plurality of processing systems from shortest to longest time, Applicants again note that Hartsell does not represent capacity in units of time. Moreover, the Chafe patent publication also does not teach or suggest representing capacity in units of time. Chafe teaches that traffic data for truck groups may be graphically illustrated by capacity (paragraphs 0038, 0061,

YOR920000462   -12-

Serial No. 09/690,872
Art Unit No. 2127

and 0137, as well as Fig. 18). The illustrated example does not sort the data, however. In addition, the graphically illustrated Chafe data is shown as percentages and is not provided as units of time. Again, Applicants conclude that the claim feature is not obviated.

Applicants also disagree with the Examiner's contention that Hartsell teaches the claim features recited in Claims 2, 12 and 16, and claims which depend therefrom. The claims recite the representing of capacity in units of time as comprising steps for calculating the life expectancy of each resource in each processing system, identifying at least one critical resource having the shortest life expectancy, and using that shortest life expectancy as the life expectance for the system. The cited Hartsell teachings in paragraphs 0180-0181 and Fig. 5 mention resource availability but do not teach or suggest life expectancy. Applicants remind the Examiner that the term "life expectancy" is defined by the present Specification on page 9 and is not a loosely-used synonym for resource availability. Moreover, Hartsell's passages and illustration amount to asking one resource if it is available (reference numeral 150 of Fig. 5) before transferring the work to another resource (reference numeral

YOR920000462   -13-

Serial No. 09/690,872
Art Unit No. 2127

155 of Fig. 5). Such is not the same or suggestive of the claimed steps of calculating, identifying and defining.

In rejecting Claims 6-10, the Examiner has additionally cited the MacFarlane patent. The claims all recite plotting the life expectancy for each of N resources of each processing system in an N dimensional capacity space. However, what MacFarlane describes and illustrates is mapping performance over a period of months (see: Fig. 9). Applicants respectfully assert that the MacFarlane patent does not teach or suggest the claim feature. Moreover, Applicants believe that modifying Hartsell and Chafe with MacFarlane not result in the invention as claimed since none of the cited references teaches or suggests representing a plurality of capacities, one capacity for each system of a plurality of processing systems in unit of time, sorting the capacities from shortest to longest (Claims 1, 6-7, 11, 13, 15, and 17-20), calculating the life expectancy of each resource, identifying at least one critical resource with the shortest life expectancy (Claims 2, 12, and 16), and acting on the capacity/life expectancy determinations across a plurality of processing systems (Claims 3-5, 8-10, 14, 18, and 20).

YOR920000462   -14-

Serial No. 09/690,872
Art Unit No. 2127

Based on the foregoing amendments and remarks,
Applicants respectfully request entry of the amendments,
reconsideration of the amended claim language in light of
the remarks, withdrawal of the rejections, and allowance of
the claims.

Respectfully submitted,

L. Mummert, et al

By: _Anne Vachon Dougherty_____
Anne Vachon Dougherty
Registration No. 30,374
Tel. (914) 962-5910

YOR920000462   -15-